

STATE OF MICHIGAN
COURT OF APPEALS

LINDA GIFFELS,

Petitioner-Appellee,

v

MILLINGTON COMMUNITY SCHOOLS
BOARD OF EDUCATION,

Respondent-Appellant.

UNPUBLISHED

February 2, 2010

No. 287175

State Tenure Commission

LC No. 07-000030

Before: Servitto, P.J., and Fort Hood and Stephens, JJ.

PER CURIAM.

Respondent appeals by leave granted the ruling by the State Tenure Commission (STC) ordering petitioner suspended without pay until the end of the 2008-2009 school year. The STC order reversed the preliminary holding by the hearing officer authorizing respondent's request to terminate petitioner's employment. We affirm.

Petitioner was a teacher for Millington Community Schools for 30 years. She was subject to discipline after attending a driver's education conference in Mt. Pleasant from Wednesday, April 25 through Friday, April 27, 2007. Petitioner submitted copies of receipts from Old Country Buffet seeking reimbursement for breakfast on Thursday and lunch on Friday of the conference. The copied receipts were different from the original receipts because they did not contain the date and time of the meal, and omitted the location of the restaurant listed on the original receipts. At an investigative interview regarding the receipts, petitioner maintained that she had eaten the Thursday breakfast at Old Country Buffet. However, it was determined that the receipt submitted for breakfast reimbursement was from a meal on Saturday, April 28 at an Old Country Buffet near petitioner's home, and that there was no Old Country Buffet restaurant in Mt. Pleasant.

Respondent argues on appeal that offenses involving theft and deceit are just cause and reasonably require dismissal from employment and that the STC had no authority to impose a different penalty. Respondent also argues that the STC decision was contrary to law and was not supported by substantial evidence. In light of the applicable standard of review, we affirm the decision by the STC. We review an appeal from the STC to determine whether the record contained competent, material, and substantial evidence to support the commission's findings. *Widdoes v Detroit Pub Schools*, 242 Mich App 403, 408; 619 NW2d 12 (2000). "Substantial evidence is that which a reasonable mind would accept as adequate to support a decision; it is

more than a scintilla but may be substantially less than a preponderance.” *Id.* at 408-409 (Further citation omitted.) A final decision of the STC must be upheld if it is not contrary to law, is not arbitrary, capricious, or a clear abuse of discretion, and is supported by competent, material, and substantial evidence on the whole record. See *Ranta v Eaton Rapids Pub Schools Bd of Ed*, 271 Mich App 261, 265; 721 NW2d 806 (2006). Questions of law are reviewed de novo. *Moore v Secura Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008).

The clear legislative intent in passing the Teacher Tenure Act (TTA), MCL 38.71 *et seq.*, was to protect teachers from the arbitrary and capricious employment practices of their employers. *VanGessel v Lakewood Pub Schools*, 220 Mich App 37, 41; 558 NW2d 248 (1996). The STC is “vested with such powers as are necessary to carry out and enforce the provisions of [the TTA].” MCL 38.137; see also *Ranta, supra* at 266. Tenured teachers may be discharged or demoted only for reasonable and just cause. MCL 38.101; see also *Satterfield v Grand Rapids Pub Schools Bd of Ed*, 219 Mich App 435, 437; 556 NW2d 888 (1996). The burden of establishing reasonable and just cause rests with the school district. *Satterfield, supra*. Reasonable and just cause can only be shown by significant evidence proving that the teacher is unfit to teach, and the inquiry must include the effect of the teacher’s activity on the students. *Benton Harbor Area Schools Bd of Ed v Wolff*, 139 Mich App 148, 154; 361 NW2d 750 (1984).

The STC shall act as a board of review for all cases appealed from the decision of a controlling board. MCL 38.139(1). The Legislature has vested the STC with decision-making authority regarding the appropriate penalty for teacher misconduct. *Lewis v Bridgman Pub Schools (On Remand)*, 279 Mich App 488, 496-497; 760 NW2d 242 (2008). In an appeal to the STC, the STC reviews de novo all questions of fact and law decided by the school board. *Lakeshore Pub Schools Bd of Ed v Grindstaff (After Second Remand)*, 436 Mich 339, 354-355; 461 NW2d 651 (1990); accord *Lewis, supra* at 490. The STC has the power and authority to take additional testimony and determine as original questions all issues of fact and law decided by a school board. *Birmingham School Dist v Buck*, 204 Mich App 286, 293; 514 NW2d 528 (1994). When exceptions are filed, the STC does not take additional evidence but limits its review to the issues raised in the exceptions and has authority to “adopt, modify, or reverse the preliminary decision and order” of the hearing officer. MCL 38.104(5)(m); see *Lewis, supra* at 496.

Therefore, the STC has the authority to reduce the level of discipline for a tenured teacher from discharge imposed by a school board to suspension where it determines that the charged misconduct, while proven, was not reasonable and just cause for discharge. Respondent argues that, because petitioner was found to commit a theft against the school district, that reasonable and just cause to terminate her did exist and the STC was without authority to reinstate her employment. See MCL 38.101; *Satterfield, supra* at 437 (tenured teachers may be discharged or demoted for reasonable and just cause).

Here, the hearing officer concluded that respondent “established reasonable and just cause to discipline [petitioner] and that the appropriate measure of discipline is discharge.” Petitioner filed exceptions to the hearing officer’s decision. After considering the exceptions to the hearing officer’s decision, the STC found merit in one of petitioner’s ten exceptions—the level of discipline determined by the hearing officer despite affirming the hearing officer’s finding that petitioner was intentionally deceptive. The STC confirmed the seriousness of the charges, particularly in light of a teacher’s position of influence on students, and endorsed

“significant discipline.” However, the STC also noted that petitioner had not been disciplined for similar conduct in her 30 years as a teacher, and discussed the positive contributions of petitioner’s work as a “successful teacher” and her involvement in extracurricular activities for students. The STC conducted a balancing of all relevant factors to conclude that the penalty of discharge was excessive and a one-year suspension without pay was appropriate under the circumstances.

Respondent urges that, as a matter of law, this finding that petitioner engaged in theft or dishonesty was just cause for her discharge. Respondent cites seven STC cases where employees of school districts were apparently discharged for dishonesty or theft and five arbitration cases where employees were apparently discharged for even small instances of theft, including discharge for taking a candy bar from a vending machine. Respondent states that a presumption exists that an administrative agency will follow precedent from prior decisions unless the departure is explained. *Atchison, Topeka & Santa Fe Railway Co v Wichita Bd of Trade*, 412 US 800, 807; 93 S Ct 2367; 37 L Ed 2d 350 (1973).

In *Satterfield, supra* at 436-437, this Court upheld a teacher’s dismissal from his school employment after having been convicted of embezzling from his other employment in retail. The STC found that the teacher’s conviction of a crime involving moral turpitude raised a presumption that his conduct made him unfit to teach, and that retention of appellant after his embezzlement conviction would have an adverse effect on the school, parents, and children. *Id.* at 436-437, 439-440. This Court found that the STC’s findings were supported by competent, substantial, and material evidence on the whole record. *Id.* at 439-440.

In *Lewis, supra* at 489-490, 498, this Court upheld the STC’s decision to reduce the discharge of a teacher, as recommended by the hearing officer, to a one-year suspension without pay. In *Lewis* the teacher had given a student an air gun, a replica of a semi-automatic weapon, as a gift on school grounds, and had prior lapses in judgment as well. *Id.* at 490, 493-494. The STC disagreed with the hearing officer’s conclusions only with regard to the appropriate level of discipline. *Id.* at 497. The STC cited several reasons for its decision to modify the hearing officer’s recommendation and impose a less severe penalty, such as application of progressive discipline principles, and the teacher’s record of significant contributions as a teacher and involvement in the community. *Id.* at 495-498.

In *Lakeshore, supra* at 342-343, our Supreme Court reversed this Court and affirmed the STC’s reduction of a teacher’s discharge to a suspension where the STC found there was not a reasonable and just cause for termination. The teacher had four charges including insubordination, leaving class unattended, and two previous suspensions. *Id.* at 344. The STC discussed the importance of stern discipline of insubordination in attempt to maintain the proper environment for students and staff. *Id.* at 346. The teacher’s penalty was reduced due to the STC’s consideration of the importance of a progressive discipline policy, and the lengthy and positive teaching contributions of an outstanding teacher. *Id.* Notably, the STC said that insubordination may constitute a just and reasonable cause for discharge, but did not automatically justify discharge in all cases. *Id.* at 345-346. The STC concluded that discharge was simply too severe for the conduct of the particular teacher. *Id.* at 346.

The case law indicates that, despite inappropriate conduct, the STC has the power to examine all of the facts and circumstances surrounding the discipline of the teacher against the

teacher's past history and school contributions to impose a graduated level of punishment. Indeed, the STC has the power and authority to determine all issues of fact and law decided by a school board as original questions. *Birmingham School Dist, supra* at 292-293; *Lakeshore, supra* at 354-355. No law has been cited on appeal that requires a teacher to be terminated for offenses involving dishonesty. If dishonesty offenses were per se cause for discharge, the STC's review would be reduced to "indulge in idle ceremonies." *Lakeshore, supra* at 354. Additionally, an administrative agency is generally free to reexamine its prior decisions and depart from its precedents if it explains the departure. *Melvindale-Northern Allen Park Federation of Teachers, Local 1051 v Melvindale-Northern Allen Park Pub Schools*, 216 Mich App 31, 37-38; 549 NW2d 6 (1996).

In the present case, the STC found that dismissal was an excessive penalty for petitioner's particular offense. In other words, petitioner's deceptions, although serious, were not just and reasonable cause for discharge. Even though the *Lakeshore* and *Lewis* cases discussed above did not involve instances of theft or dishonesty, they involved serious infractions that affected the staff and students of the schools and discharge was not determined to be the appropriate remedy. The Legislature has vested the STC with decision-making authority regarding the appropriate penalty for teacher misconduct. *Lewis, supra* at 496-497. De novo review means and requires that the STC determine any penalty to be imposed, and the STC was empowered to substitute its judgment for that of the school board and hearing officer regarding the discipline to be imposed as an issue of law and fact. *Lakeshore, supra* at 348, 357.

Alternatively, respondent argues that the STC's decision was not supported by law or by substantial evidence. A final decision of the STC must be upheld if it is not contrary to law, is not arbitrary, capricious, or a clear abuse of discretion, and is supported by competent, material, and substantial evidence on the whole record. *Ranta, supra* at 265. Review of the STC's decision involves a degree of qualitative and quantitative evaluation of all the evidence that was considered, rather than just those portions of the record supporting the STC's decision. *Lewis, supra* at 496. Even though the decisions of the STC are not binding on this Court, we may choose to give them some deference. *Parker, supra* at 570. The reviewing court may not substitute its judgment for that of the agency in the absence of fraud or jurisdictional defect. *Ranta, supra* at 265.

As discussed above, the STC was authorized to determine the appropriate level of discipline as an issue of law and fact. *Lakeshore, supra* at 348, 357; *Lewis, supra* at 496-497. Further, if an agency decision is an explained departure from precedent, appellate review is limited to whether the rationale is so unreasonable as to be arbitrary and capricious. *Melvindale-Northern Allen Park Federation of Teachers, Local 1051, supra* at 37-38.

Respondent argues that the STC's reduction in discipline was unsupported by competent, material, and substantial evidence on the whole record. The STC's decision affirmed that petitioner's misconduct was serious and could have resulted in discharge. The STC agreed with the hearing officer that petitioner was dishonest in submitting the receipts, during the investigative interview, and during the administrative hearing, and had not taken responsibility for her conduct. The STC only disagreed with the extent of the penalty for petitioner's infractions. It was concluded that the misconduct was an aberration in petitioner's long career and that there was no evidence that it is likely to recur. The STC cited evidence of petitioner's many extracurricular activities and mentioned evaluations of petitioner describing many positive

contributions to students, helping at-risk students, and petitioner's caring relationships with students and cooperative spirit in solving problems at school. Petitioner's most recent evaluation provided that she was an excellent teacher and an asset to the school. Her school principal stated in the evaluation that petitioner was "involved in many aspects of the school," "always available to help students," and "displaying a hard working attitude" and a "high level of enthusiasm for her professional responsibilities."

In light of the excellent performance reviews and the fact that there was no evidence of prior misconduct in petitioner's thirty year career, the STC reduced the penalty ordered by the hearing officer, concluding that discharge was excessive, and a suspension without pay until the end of the 2008-2009 school year was the appropriate level of discipline.

Respondent characterized the STC's decision as disturbing because it makes it impossible to terminate a teacher for theft, exposes the school to education given by someone who has been found a thief, and ignores that petitioner continues to seek to take money from the district, presumably in the form of petitioner's civil lawsuit against the district.¹ This argument was presented to the STC and rejected when the commission balanced the gravity of petitioner's misconduct against her performance over the past thirty years.

The record demonstrates that the STC considered and validated the interests presented by respondent, and also considered evidence of petitioner's value to the students beyond the deception that she perpetrated. The STC imposed a significant penalty of suspension without pay until after the 2008-2009 school year. This Court gives deference to the expertise of an administrative agency, and will not "invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views." *Widdoes, supra* at 286. The decision was not arbitrary, capricious, or a clear abuse of discretion, and is supported by competent, material, and substantial evidence. See *Ranta, supra* at 265.

Affirmed.

/s/ Deborah A. Servitto
/s/ Karen M. Fort Hood
/s/ Cynthia D. Stephens

¹ On appeal in Docket No. 286785.